National Indian Gaming Commission





# Tribal Gaming Ordinances & the NIGC Review Process

Office of General Counsel May 12, 2014





## **Training Objectives**

- understand the NIGC ordinance review and approval process
- become familiar with ordinance requirements
- be introduced to the NIGC's revised Model Gaming Ordinance



## Why are tribal gaming ordinances important to tribes?

- provide general framework for regulation
- foundation upon which a tribe's gaming operation is built
- include specific procedures that must be followed and standards that must be met
- key part of IGRA's regulatory scheme for tribes



## Why must tribes submit an ordinance for review and approval?

- To conduct gaming, tribes must have an NIGCapproved gaming ordinance in place
- It's one of the fundamental legal requirements of Indian gaming
- No approved ordinance = no gaming activities on Indian lands



## What are the requirements for approval?

- duly adopted by tribal governing body
- contains all provisions required by IGRA
- ▶all required submissions were provided to NIGC
- ▶other content does not conflict with IGRA or NIGC regulations



## What is the process for review?

- NIGC Chair has 90 days to decide
- OGC attorney review
- Checklist for review
- Prepare memo to Chair
- Chair makes decision
- If approved, letter issues, posting on NIGC website
- If disapproved, appeal within 30 days



## When an ordinance can't be approved

- missing mandatory content provisions or language
- ▶ tribe failed to provide mandatory submission information to NIGC, or
- is inconsistent with IGRA and/or NIGC regulations
- OGC may recommend that:
  - withdraw ordinance
    - make necessary changes
    - have tribal governing body adopt revised ordinance, and
    - resubmit revised ordinance for approval
- Ordinance disapproved if changes not made



## What if NIGC fails to take action on ordinance within 90 days?

"Substitute Approval"

 Considered approved, but only to extend consistent with IGRA and NIGC regulations



## Amendments – review & approval

- Why amend an ordinance?
  - ▶ To update
  - ▶ To conform with new NIGC regulations
  - ▶ To incorporate new best practices
- Amendments must be submitted to the NIGC within 15 days of passage
  - may trigger review of entire amended ordinance



## Ordinance "content" and "submission" requirements

IGRA and NIGC regulations have content and submission requirements

Both must be satisfied for approval



## **Ordinance submission requirements**

- "Submission" requirements refer to information that must be provided to the NIGC during review process
  - need not be part of the ordinance document itself
  - can be submitted separately or
  - can be included in ordinance document
- <u>Not</u> required to be included in ordinance by IGRA and NIGC regulations
- Listed in 25 CFR 522.2 ("Ordinance Submission Requirements")



## **Ordinance content requirements**

- "Content" requirements refer to provisions and text that must be included in ordinance document by IGRA and NIGC regulations
- Listed in 25 CFR 522.4(b)(1) ("Ordinance Approval Requirements")



#### Ordinance content considerations

 Even if not mandatory, all ordinance provisions and text must be consistent with IGRA and NIGC regulations



## The revised Model Gaming Ordinance

- Created to help tribes develop a new gaming ordinance, or update or amend an existing ordinance
- Created to provide tribes with a blueprint to create a strong tribal gaming ordinance
- Provides guidance on:
  - what is required by IGRA and NIGC regulations
  - what is not required, but may be included
  - what is recommended for strong regulation



#### What information is included?

Must contain provisions and text that are:

- required by IGRA and NIGC regulations to be included in a tribe's gaming ordinance – certain text must be word-for-word
- •not required to be included, but if included, must be consistent with IGRA and NIGC regulations, and
- recommended, but not required

Color-coded to identify which provisions and text are required and/or recommended



## **Color-coding key**

- Text in blue is required to be included in a gaming ordinance
- Text in red is required to be either separately submitted or included in the ordinance itself
- Text in green is not required to be included in ordinance, but, if included, must be consistent with IGRA and NIGC regulations
- Text in black is recommended, but not required by IGRA or NIGC regulations



#### Word-for-word text

Certain provisions are required to be included, wordfor-word, in a gaming ordinance

#### They include:

- the Privacy Act notice, and
- the False Statement notice



## Recommended provisions in the revised MGO

- Certain provisions are recommended for inclusion in an ordinance, although not required
- These are regulatory tools or practices different tribes have developed and incorporated into their gaming ordinances
- "Best practices" are from ordinances reviewed and approved by NIGC over the years



## Major changes since 2005

- Privacy Act & False Statement notices on licensing applications (part 556)
- Background investigations submissions (part 556)
- Records retention background investigation and licensing records (parts 556 and 558)
- Issuance of tribal gaming licenses (part 558)
- Revocation of tribal gaming licenses (part 558)



#### **Conclusion**

- •We encourage tribes to update their ordinances to keep up with regulatory changes and new best practices.
- We also encourage tribes to reach out to us for assistance in developing or updating a gaming ordinance.
- •Questions?



### Questions after today? Please contact us.

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